

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/(954) 797-1101  
Prepared By: Annie Feng

**SUBJECT:** Quasi Judicial Hearing: Variance  
V 11-1-02, Cesar A. Carcia, 9060 Lake Park Circle/Generally located on the south side of Lake Park Circle, 600 feet east of Grove Drive.

**AFFECTED DISTRICT:** District 3

## **TITLE OF AGENDA ITEM:**

The petitioner has requested a variance **FROM** Section 12-33(A)(2) of the Land Development Code which states in residential districts all accessory uses, storage sheds, and accessory buildings up **TO** one hundred fifty (150) square feet in area, shall be located at least five (5) feet from any plot line to reduce the minimum rear setback to three (3) feet.

## **REPORT IN BRIEF:**

This variance request is an after-the-fact application. A building permit for a concrete slab indicating a required five-foot setback from the rear property line was issued for the subject property in March of 2001. The slab was installed three (3) feet from the rear setback and failed the final inspection.

The subject property is within a PRD district which permits ten (10) feet rear setback, zero (0) foot setback on one side and ten (10) feet on the other side for the main structure. The subject property is identical to the neighboring properties on the same street and has no peculiar difficulty to comply with the applicable Land Development Regulations for the concrete slab. The alleged hardship is self-created by the inappropriate construction. Granting of the requested variance is not necessary for reasonable use of the land. The owner can enjoy the same privilege afforded to other homeowners in the same development by cutting the slab back to the setback line.

## **PREVIOUS ACTIONS:**

**CONCURRENCES:** At February 12, 2003 Planning and Zoning Board meeting, Mr. Turin made motion, seconded by Mr. Waitkus, to deny (motion carried 3-0 with Ms. Lee dissenting and Mr. Bender absent).

At the August 20, 2002 Special Master Hearing, a Final Order was issued to require the petitioner to comply with the Land Development Code by either removing two (2) feet of said concrete slab from the property or obtaining a variance within 90 days.

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Staff recommends that the subject report, on the variance petition, be reviewed and discussed by Town Council so that a final decision may be rendered.

**Attachment(s):** Planning Report, Justification letter, Staff approved building permit, Final Order, Land use map, Subject site map, Aerial

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**TOWN OF DAVIE**  
**Development Services Department**  
**Planning & Zoning Division Staff**  
**Report and Recommendation**

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**APPLICANT INFORMATION**

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**Owner/Petitioner:**

**Name:** Cesar A. Garcia  
**Address:** 9060 Lake Park Circle  
**City:** Davie, FL 33328  
**Phone:** (954)452-9336

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**Background Information**

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**Date of Notification:** January 15, 2003    **Number of Notifications:** 102

**Application History:** This item was tabled at the January 22, 2003 Planning and Zoning Board meeting. The Board requested the Special Master Final Order and staff approved building permit be presented at the meeting.

**Application Request:** Variance **FROM:** Section 12-33(A)(2) of the Land Development Code which states in residential districts all accessory uses, storage sheds, and accessory buildings up to one hundred fifty (150) square feet in area, shall be located at least five (5) feet from any plot line **TO:** reduce the minimum rear setback to three (3) feet.

**Address/Location:** 9060 Lake Park Circle/Generally located on the south side of Lake Park Circle, 600 feet east of Grove Drive.

**Future Land Use Plan Designation:** Residential (3 DU/AC)

**Zoning:** PRD (Planned Residential Development District)

**Existing Use:** Single family dwelling

**Proposed Use:** Single family dwelling

**Parcel Size:** 0.093 acres (4,050 square feet)

	<b><u>Surrounding Uses:</u></b>	<b><u>Surrounding Land Use Plan Designation:</u></b>
<b>North:</b>	Single family residential, across Lake Park Circle	Residential (3 DU/AC)
<b>South:</b>	Open space	Residential (3 DU/AC)

<b>East:</b>	Single family residential	Residential (3 DU/AC)
<b>West:</b>	Single family residential	Residential (3 DU/AC)

**Surrounding Zoning:**

<b>North:</b>	PRD (Planned Residential Development District)
<b>South:</b>	PRD (Planned Residential Development District)
<b>East:</b>	PRD (Planned Residential Development District)
<b>West:</b>	PRD (Planned Residential Development District)

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### **Zoning History**

**Related Zoning History:** On June 3, 1987, the Town Council approved rezoning the subject site from A-1, Agriculture District to PRD, Planned Residential District (Ordinance No. 87-70).

**Previous Request on same property:** Town Council approved the site plan for the subject site, SP 9-5-93 Forest Ridge – Cluster Homes IV A, on November 3, 1993.

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### **Application Details**

This variance request is an after-the-fact application. A building permit for a concrete slab indicating a required five-foot setback from the rear property line was issued for the subject property in March of 2001. The slab was installed three feet from the rear setback and failed the final inspection. A citation was issued by the Special Master. A variance is required to keep the slab as-is.

Under the Land Development Code, in residential districts, all accessory uses and accessory buildings up to one hundred fifty (150) square feet in area, shall be located at least five (5) feet from any plot line. Accessory buildings and structures over one hundred fifty (150) square feet in area shall be subject to the limitations on location of a building and shall not be placed in any required yard. The subject property is within a PRD district (Forest Ridge – Cluster Homes IV A) with a minimum rear setback of ten (10) feet for the main structure. The concrete slab is approximately two hundred forty three (243) square feet in area and occupies more than fifty (50) percent of the rear yard.

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### **Applicable Codes and Ordinances**

1. Section 12-33(A) 2 of the Land Development Code permits accessory structures to be located five (5) feet from any plot line.
2. Section 12-309, Review for variances.

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### **Comprehensive Plan Considerations**

**Planning Area:** The subject property falls within Planning Area 5. Planning Area 5 is bound by Nova Drive on the north, University Drive on the east, and Nob Hill Road on the west. The southern limits are SW 36 Street, on the western portion. This planning area is comprised of residential uses developed at a density of three to 22 dwelling units per acre and commercial

development, existing and proposed, along the University Drive and Orange Drive corridors. The Pine Island Ridge, classified as environmentally sensitive, has been preserved within this planning area.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 100.

**Applicable Goals, Objectives & Policies:**

Objective 1: No later than December 1, 1989, the Town shall adopt and implement land development regulations, including subdivision regulations, that will encourage and facilitate residential development in accordance with the Future Land Use Plan, and in an aesthetically and environmentally sound manner.

Policy 1-1: The Town shall investigate and implement, as appropriate, innovative land development regulations that afford flexibility in developing residential communities while maintaining adequate standards necessary to promote the health, safety and welfare of Town residents.

Policy 1-2: Land development regulations shall require the maintenance of properties and implement this requirement through code enforcement efforts.

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**Staff Analysis**

The intent of the Land Development Regulations for accessory structures and buildings in residential districts is to provide for the appropriate placement of accessory structures and buildings to ensure adequate pervious areas for each individual lot and to minimize the adverse impact to the neighboring properties. The subject property is within a PRD district which permits ten (10) feet rear setback, zero (0) foot setback on one side and ten (10) feet on the other side for the main structure. The concrete slab encroaches two (2) feet into the required rear setback and occupies fifty four (54) percent of the rear yard. The rear yard is forty (40) feet by ten (10) feet and the slab, as constructed, allows for thirty two (32) percent of pervious area for the lot.

A building permit was issued to the applicant for a concrete slab with a five (5) feet rear setback. The code was violated by the inappropriate construction. The applicant was fully aware of the code requirements for the setbacks prior to the installation of the slab.

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**Findings of Fact**

**Variances:**

**Section 12-309(B)(1):**

**The following findings of facts apply to the variance request.**

(a) There is not a special circumstance or condition applying to the land or building for which the variance is sought, which circumstance or condition is peculiar to such land or building and does not apply generally to land or building in the same district, and that said circumstance or condition is such that the strict application of the provisions of this chapter would not deprive the applicant of the reasonable use of such land or building for which the

variance is sought. The alleged hardship is not self-created by persons having an interest in the property.

*The subject property is identical to the neighboring properties on the same street and has no peculiar difficulty to comply with the applicable Land Development Regulations for the concrete slab. The alleged hardship is self-created by the inappropriate construction. The problem can be easily corrected by cutting the slab back to the required setback line. The application of the provisions of this chapter would not deprive the applicant of the reasonable use of the land.*

(b) The granting of the variance is not necessary for the reasonable use of the land or building and that the variance as requested is not the minimum variance that will accomplish this purpose.

*Granting of the requested variance is not necessary for reasonable use of the land. The owner can enjoy the same privilege afforded to other home owners in the same development by cutting the slab back to the setback line.*

(c) Granting of the requested variance is not in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*Granting of the requested variance is not in harmony with the general purpose and intent of this chapter and injustice to the neighboring property owners who comply with the code, therefore, will be detrimental to the public welfare.*

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### **Staff Recommendation**

**Recommendation:** Staff finds the subject application complete and suitable for transmittal to Planning and Zoning Board for further consideration.

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### **Planning & Zoning Board Recommendation**

At January 22, 2003 Planning and Zoning Board meeting, Vice-Chair Bender made a motion, seconded by Ms. Turin, to table to February 12, 2003. (Motion carried 5-0).

### **Final Planning & Zoning Board Recommendation**

At February 12, 2003 Planning and Zoning Board meeting, Mr. Turin made motion, seconded by Mr. Waitkus, to deny (motion carried 3-0 with Ms. Lee dissenting and Mr. Bender absent).

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#### **Exhibits**

Planning Report, Copy of Final Order, Copy of the Original Approved Site Plan for the Slab, Justification letter, Subject Site Map, Land Use Map and Aerial.

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_



November 27, 2002

The Town of Davie  
6591 Orange Drive  
Davie, FL 33314

To Whom It May Concern:

This letter is in regards to the concrete slab that I have installed in my backyard. I am requesting a variance to keep the slab as is, as other homeowners in the area have done so.

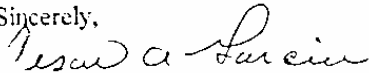
I have discussed this with the Lake Park Association and have been told that there isn't a problem with keeping the slab that I have, but I will need to obtain a variance from the City of Davie.

I was extremely surprised to be have received a violation as I have complied with all of the requests from the City of Davie and have been diligent with following all of the policies and guidelines.

I have experienced economical hardship and have therefore been unable to request this variance sooner, but at this time I am hoping that the City will be sympathetic to my situation and will assist me in any way possible.

Thank you for your time and consideration.

Sincerely,



Cesar Garcia  
9060 Lake Park Circle  
Davie, FL 33327

RECEIVED  
TOWN OF DAVIE  
NOV 29 2002  
PLANNING DEPT.

THE TOWN OF DAVIE, Broward  
County, Florida, A Florida  
Municipal Corporation,

Petitioner,

v

CESAR A. GARCIA and MARTHA I. TALERO,

Respondents.

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TOWN OF DAVIE  
CODE COMPLIANCE  
SPECIAL MASTER

CASE NO. 02-930

**FINAL ORDER**

**THIS MATTER** having come before the TOWN OF DAVIE, SPECIAL MASTER, for Final Hearing, pursuant to notice, on the 20th day of August, 2002, and the SPECIAL MASTER having heard the statement of the Town Code Compliance Officer, and having reviewed the Town File in the matter, and being otherwise fully advised in the premises, finds and orders as follows:

1. Upon testimony heard and the evidence received, it appears that Respondents, CESAR A. GARCIA and MARTHA I. TALERO, have constructed a concrete slab which does not conform to required zoning setback requirements of the Town of Davie, at 9060 Lake Park Circle North, within the Town of Davie, Broward County, Florida. As a result, the Special Master finds that Respondents have violated section 12-80 of the Davie Town Code, which violation continued to exist at the time of the Final Hearing in this matter.



2. That Respondents shall within ninety(90) days, in all respects, comply with the aforesaid Davie Town Code Section 12-80 by either removing two(2) feet of said concrete slab from the property or obtaining a Town of Davie zoning variance. Upon the completion thereof, Respondents shall notify the Code Compliance Officer of the Town of Davie of the fact of such compliance. Respondents shall thereafter continuously comply with the aforesaid Davie Town Code Section(s), and a failure to do so shall be considered a violation of this Order, and the matter will then be set for hearing before the Special Master to consider the assessment of an administrative fine of up to \$250.00 per day per violation and up to \$ 500.00 per day for repeat violations, and the imposition of a lien as provided by Section 162.09, Florida Statutes, for each day each such violation shall occur after the date set for compliance hereinabove.

3. The Code Compliance Officer of the Town of Davie is hereby directed to make an inspection of the subject property upon the expiration of the time prescribed for compliance herein, or, upon receipt of notice from Respondent that Respondent has complied with this Special Master's Order, and thereafter from time to time to ensure compliance herewith, and to promptly report his findings regarding such inspection(s) to the Special Master.

4. In the event that the Code Compliance Officer shall report to the Special Master that the Respondent has failed to comply with this Special Master's Order as set forth herein, the Special Master shall then consider the matter of an administrative fine and lien

as set forth in section 162.09, Florida Statutes, and the Special Master retains jurisdiction over this matter for such purpose.

**DONE AND ORDERED** in Davie, Broward County, Florida this 21st day of August,

2002 .

TOWN OF DAVIE

BY: \_\_\_\_\_

  
Richard E. Conner, Esquire  
SPECIAL MASTER

Copies furnished:  
CESAR A. GARCIA and MARTHA I. TALERO  
(CERTIFIED MAIL)  
Clerk, Special Master Hearing  
Town Prosecutor  
Code Inspector

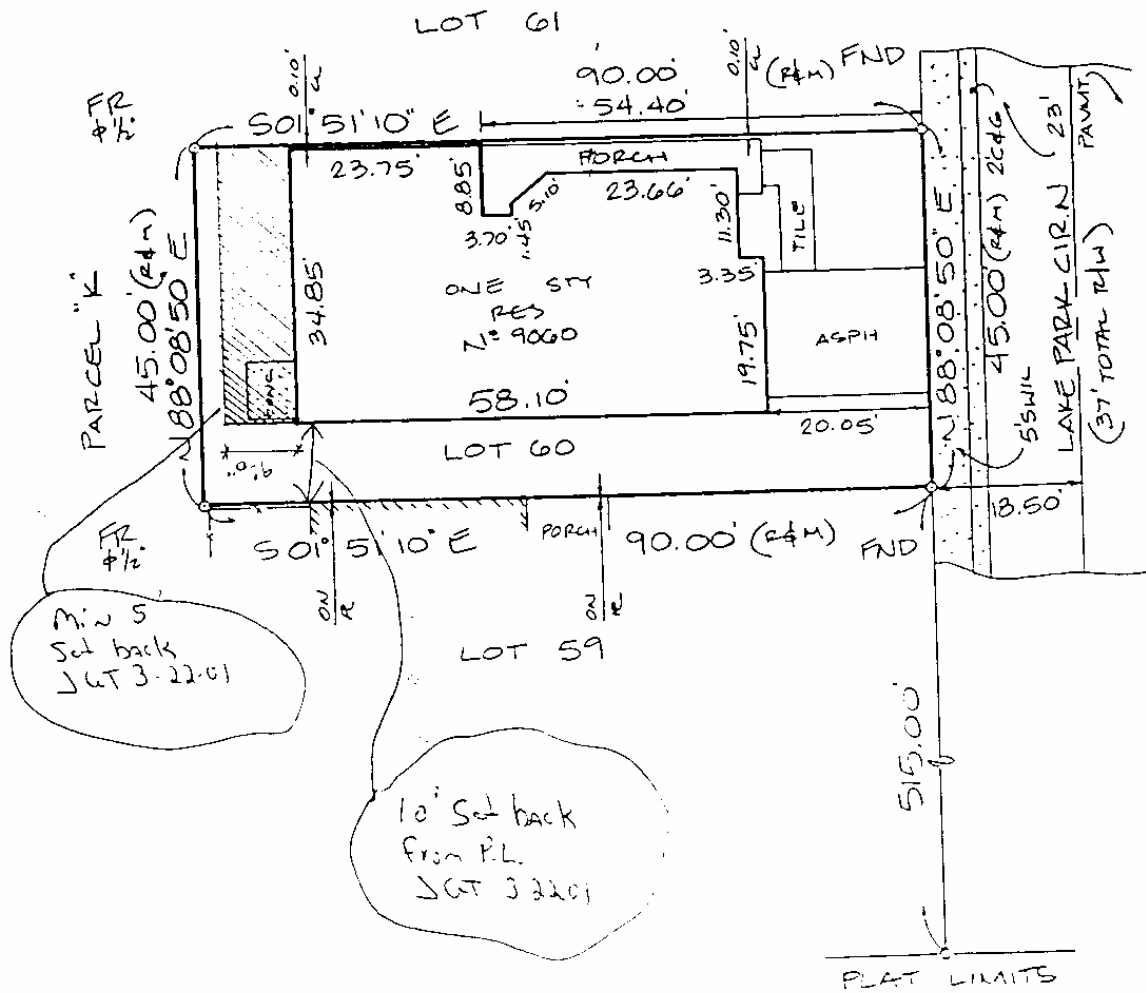
# SKETCH OF SURVEY (BOUNDARY SURVEY)

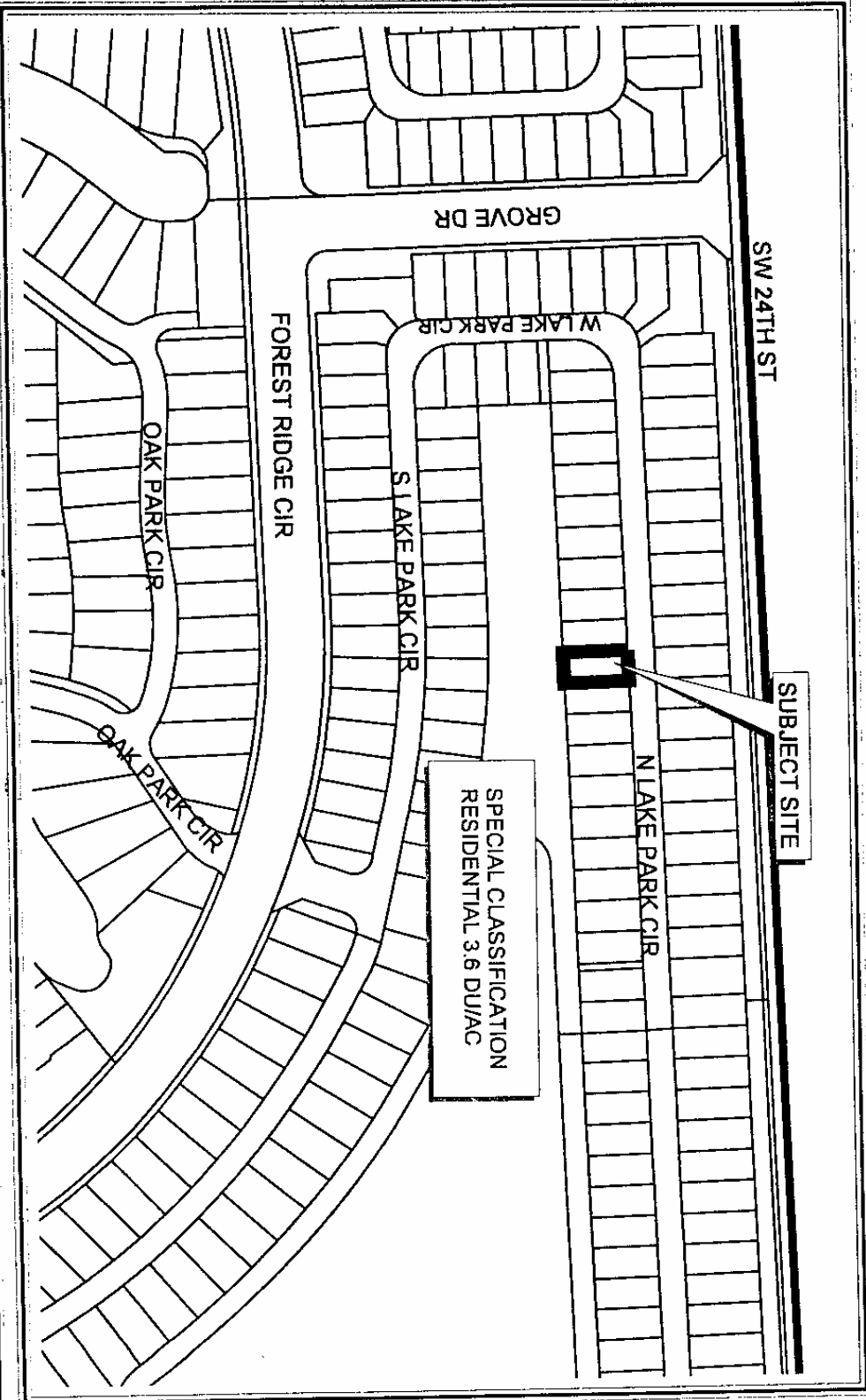
SCALE: 1" = 20'

PROPERTY ADDRESS 9060 LAKE P

LEGAL DE

LOT 60  
SUBDIVISION "FOREST RIDGE CLJS"  
ACCORDING TO THE PLAT THEREOF AS  
OF THE PUBLIC RECORDS OF BROWAR





N

200 0 200 400 Feet

Planning & Zoning Division - GIS

**VARIANCE**  
**V 11-1-02**  
**Future Land Use Map**

Date Prepared: 12/20/02  
Prepared By: ILD

